

X

Any Finding of Fact which is deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions of Law, the Board enters the following
ORDER

The Notice of Violation Number 1745 and Order of Civil Penalty is AFFIRMED, but the Notice of Violation Number 1777 and Order of Civil Penalty is REVERSED.

DONE this 12th day of March, 1991.

POLLUTION CONTROL HEARINGS BOARD

Annette S. McGee
ANNETTE S. MCGEE, Presiding

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Member

0125B

V

In NWAPA Penalty Violation Number 1747, we conclude that some prohibited material was burned by Mr. Robert Vogtman.

VI

In NWAPA Penalty Violation Number 1777, we conclude that there wasn't sufficient evidence to define whether the prohibited material of a mattress was burned by Mr. Vogtman.

VII

The amount of the fine depends upon several factors including the severity of the offense, whether there has been past violations and so forth. Fines are not applied as punishment, but are issued to encourage future compliance. The appellant made efforts toward getting the correct permit and partially dismantling the metal structure on wheels.

VIII

Several complaints had been registered against Mr. Vogtman, however, the appellant has not had any prior violations from NWAPA. Therefore, the penalty on Violation Number 1745 is reasonable, fifty dollars (\$50.00) with ten dollars (\$10.00) suspended, if there are no violations for two years.

IX

There is not sufficient evidence to uphold Penalty Number 1777.

II

NWAPA has the authority to carry out an air pollution prevention and control program which includes enforcement. Their geographical area includes Island, Skagit and Whatcom Counties (WA State Clean Air Act RCW 70.94).

III

RCW 70.94.70 states in pertinent part:

It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control.

RCW 70.94.775 states in pertinent part:

No person shall cause or allow any outdoor fire:
(1) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation which emits dense smoke or obnoxious odors. . . .

IV

Under Section 501.22 of the NWAPA Regulations, it states:

It shall be unlawful for any person to cause or allow any outdoor fire containing prohibited materials, including, but not limited to, rubber products, asphaltics products, tires, crankcase oil, petroleum wastes, plastics, garbage, dead animals or other like materials.

1 difficult to see what it was.

2 Due to the color of the smoke, and the fact that Mr. Evenson did
3 not see the mattress burning, it is unclear as to what was burning or
4 causing the smoke.

5 XI

6 On November 1, 1990, NWAPA air pollution inspector Evenson sent
7 Mr. Vogtman Notice of Violation, Number 1777, for the second alleged
8 outdoor fire on October 21, 1990. The Violation Notice was for
9 burning prohibited materials, ie., a mattress, and violation of
10 Section 501.22 of the NWAPA Regulations and WAC 173-425-045(3).

11 XII

12 On November 14, 1990, a "Notice of Imposition of Penalty"
13 assessing a fine of five hundred ten dollars (\$510.00) for Notice of
14 Violation Number 1777, was sent to Mr. Vogtman by certified mail.

15 XIII

16 Any Conclusion of Law deemed to be a Finding of Fact is hereby
17 adopted as such. From these Findings of Fact, the Board makes these

18 CONCLUSIONS OF LAW

19 I

20 The Board has jurisdiction over these persons and matters.
21 Chapters 43.21B and 70.94 RCW. We conclude that the appeals were
22 timely filed with this Board.

1 violate Section 501 of the NWAPA regulations in the future, and that
2 forty (\$40.00) dollars be paid within 30 days. The certified mail
3 article number P473 944 799 was signed with Mr. Vogtman's name.

4 IX

5 Mr. Vogtman was out of town from the first of September until
6 October 21, 1990, and was unaware of this penalty until receiving a
7 letter, dated November 26, 1990, from the NWAPA attorney, William H.
8 Nielsen. Having reviewed Mr. Vogtman's signature and his demeanor he
9 apparently did not sign for the certified "Notice of Penalty." Mr.
10 Vogtman filed his appeal with this Board on December 18, 1990.

11 X

12 After receiving a complaint on October 31, 1990, that Mr. Vogtman
13 was burning a mattress on his property, Mr. Evenson again went to the
14 property to inspect the alleged fire. He also requested Deputy
15 Sheriff Bill Wise to be there.

16 Upon arrival Mr. Vogtman would not allow Evenson on the property
17 without a court order. Evenson tried to view the alleged burning by
18 standing on the fence and from the neighbor's property. He did not
19 observe the mattress burning, but viewed some smoke coming from a
20 fire. Mr. Evenson did not get a court order to go on the property,
21 and therefore, only viewed the burning from a distance. Photographs
22 were taken at a distance which showed a light color smoke, and one
23 picture, which supposedly was the burned mattress was out of focus and
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1 light fixtures, a door, linoleum. cabinets and carpeting. He found no
2 insulation in the three (3) walls, only rolled-up newspaper. He
3 assumed the fourth wall was the same.

4 Therefore, to save time, he started to burn the remains of the
5 camper, which included a divider wall that measured approximately two
6 (2) feet wide on each side of a door opening. The door had been
7 removed.

8 VI

9 Subsequently, he became aware that there was insulation in the
10 wall that was burning, and he pulled the charred insulation from the
11 fire as quickly as possible.

12 VII

13 Following the inspection, Inspector Evenson sent Mr. Vogtman a
14 "Notice of Violation", Number 1747 on August 6, 1990, for an alleged
15 outdoor fire, burning prohibited materials, such as fiberglass
16 insulation, aluminum and treated wood on July 31, 1990. The notice
17 was to inform Mr. Vogtman that he was in violation of RCW 70.94.775
18 and Section 501.22 of the NWAPA regulations.

19 VIII

20 Subsequently, on September 5, 1990, a certified "Notice of
21 Imposition of Penalty" assessing a fine of fifty (\$50.00) dollars for
22 "Notice of Violation, Number 1747 was sent to Mr. Robert Vogtman. Ten
23 dollars (\$10.00) was to be suspended, on the condition that he not
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1 structure, a partially burned "divider wall" from the structure with
2 insulation, plywood and some foam rubber showing, and charred earth,
3 approximately ten (10) feet in diameter, where evidence of a burn took
4 place. There was also evidence of some separate pieces of partially
5 burned insulation present. Piles of unburned metal and other parts
6 from the structure were also visible on the property, which apparently
7 came from stripping the camper. It appeared from observing these
8 piles, that Mr. Vogtman stripped the camper, except for one wall which
9 was about two feet wide on both sides of a door opening. The door had
10 been removed. Mr. Vogtman was present during the inspection and
11 admitted burning the camper.

12 IV

13 Before Mr. Vogtman started the fire, he attempted to secure the
14 necessary permits by going to Fire District 8. No one was there. He
15 then proceeded to Sedro-Woolley City Hall. They referred him to the
16 Department of Natural Resources (DNR). A lady at DNR informed him
17 that he did not need a permit, if the fire was kept contained in an
18 area ten (10) by ten (10) feet. She also informed him that he was not
19 allowed to burn treated wood. His understanding of treated wood, from
20 talking to her, was painted wood. Nothing was said about plywood or
21 particle board. She did not refer him to any other agency.

22 V

23 Mr. Vogtman then proceeded to remove the roof, three (3) walls,
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1 Appellant Robert Vogtman appeared pro se. Respondent Northwest
2 Air Pollution Authority was represented by Mike Evenson, Inspector for
3 the Agency.

4 Witnesses were sworn and testified. Exhibits were admitted and
5 examined. From the testimony heard and exhibits examined, the Board
6 makes these:

7 FINDINGS OF FACT

8 I

9 Mr. and Mrs. Robert Vogtman are owners of the property at 110
10 Reece Avenue, Lyman, Washington, which is the subject of this appeal.

11 II

12 Northwest Air Pollution Control Authority (NWAPA) has the
13 authority to carry out an air pollution prevention and control program
14 in a geographical area which includes Island, Skagit and Whatcom
15 Counties. Copies of the NWAPA regulations have been filed with the
16 Board, and the Board takes official notice of these regulations.

17 III

18 On July 31, 1990, NWAPA received a complaint about the burning of
19 a camping trailer on the Vogtman property. Inspector Mike Evenson
20 investigated the complaint on August 3, 1990. Mr. Evenson found the
21 remains of a metal structure on wheels that had been partially
22 stripped, a pile of unburned scrap metal which came from the
23 structure, two garbage pails containing unburned remnants from the
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1 **BEFORE THE POLLUTION CONTROL HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 **ROBERT VOGTMAN,**)
4 **Appellant,**) **PCHB No. 90-239**
5 **v.**)
6 **NORTHWEST AIR POLLUTION CONTROL**) **FINAL FINDINGS OF FACT,**
7 **AUTHORITY,**) **CONCLUSIONS OF LAW**
8 **Respondent.**) **AND ORDER**

9 This hearing was held before the Pollution Control Hearings
10 Board, January 10, 1991, in Everett, Washington, on the appeal of two
11 notices of civil penalties issued to the appellant, Robert Vogtman.
12 Notice of penalty, dated 9-5-90, assessed a fine of fifty dollars
13 (\$50.00) and a second notice of penalty dated 11-14-90, assessed a
14 fine of five-hundred ten dollars (\$510.00). Both were for alleged
15 violations of Chapters 70.94 and 43.21 RCW and Section 501.22 of the
16 Northwest Air Pollution Control Authority Regulations. The alleged
17 violations were for allowing or causing an outdoor fire containing
18 prohibited materials, such as fiberglass, insulation, aluminum,
19 treated wood and a mattress.

20 Annette McGee presided, with Board Member Harold S. Zimmerman
21 present.

22 Lettie Hylarides, 347-3554 of Evergreen Court Reporting, Everett,
23 Washington, reported the proceedings.

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26 **FINAL FINDINGS OF FACT,**
27 **CONCLUSIONS OF LAW AND ORDER**
 PCHB No. 90-239